IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 394 of 1993

in

SPECIAL CIVIL APPLICATIONNo 9825 of 1992

with

CIVIL APPLICATION (SCA & SA BR.) No 2164 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT SECONDARY EDUCATION BOARD

Versus

JALARAM KELAVNI MANDAL

Appearance:

MR DEEPAK R DAVE for MR AD OZA for Appellant
MR MUKESH R SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 26/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. Shri Jalaram Kelvani Mandal - petitioner in Special Civil Application No. 9825 of 1992 had made an application in 1991 for starting the secondary school. The application was rejected by the Gujarat Secondary Education Board by order dated 16/8/1991 for the reasons stated in the said order which was made after hearing Shri Babubhai M. Patel, who was a trustee. Shri Jalaram Kelvani Mandal preferred an appeal to the Government, which was dismissed by the Deputy Secretary (Appeals), Education Department by his order dated 16/9/1992. The petitioner thereupon filed Special Civil Application No. 9825 of 1992 challenging the said orders refusing recognition and praying that the respondents be directed to grant recognition to run the secondary school.

2. The learned Single Judge by his order dated 2/9/1993 allowed the petition and set aside the impugned orders refusing recognition and directed the Board to discharge its legal obligation to grant recognition to the school within 12 weeks from the date of receipt of the order.

3. The Gujarat Secondary Education Board being aggrieved by the said order has filed this Letters Patent Appeal.

4. It appears that during the pendency of this appeal the order of the learned Single Judge was stayed leaving it open to the petitioner to make a fresh application for recognition and the board was directed to consider the application without taking an objection that the appeal was pending.

5. The learned Single Judge has set aside the impugned orders of the Board and the Government merely on the ground that the District Education Officer has made recommendation for the recognition of the school. The learned counsel for the appellant has rightly submitted that the recommendation of the District Education Officer is not binding on the Board and the Board is entitled to

come to its own conclusion in the matter. The learned Single Judge has not considered the reasons given by the Board for refusing recognition. In our opinion the learned Single Judge could not have straight away set aside the impugned orders merely on the ground that the District Education Officer had made recommendation for recognition without examining the reasons given by the Board and the Government for refusing recognition. The learned counsel for the appellant has also rightly submitted relying on the decision of the Hon'ble Supreme Court in the case of Union of India v/s. Era Educational Trust reported in (2000) 5 S.C.C. 57 that the learned Single Judge should not have directed the respondents to grant the recognition straight away. If at all the impugned orders refusing recognition were set aside for any reason, then the Court could have directed the Board to reconsider the matter, but should not have directed the Board to grant recognition.

6. For the above reasons, we are of the opinion that the learned Single Judge was in error in setting aside the impugned orders and directing the Board to grant recognition to the school. The appeal is, therefore, allowed and the order of the learned Single Judge is set aside. No order as to costs.

[R.K. ABICHANDANI, J.]

[M.C. PATEL,J.]

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